

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

14 Civ. 9949 (VEC)

-against-

U.S. OIL TRADING LLC, O.W. BUNKER
GERMANY GMBH, O.W. BUNKER & TRADING
A/S, O.W. BUNKER USA, INC., ING BANK N.V.,
CRÉDIT AGRICOLE CIB,

Defendants.

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U.S. OIL TRADING LLC,

Plaintiff,

15 Civ. 6718 (VEC)

-against-

M/V VIENNA EXPRESS, her tackle, boilers, apparel,
furniture, engines, appurtenances etc., *in rem*, and M/V
SOFIA EXPRESS, her tackle, boilers, apparel, furniture,
engines, appurtenances etc., *in rem*,

Defendants.

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HAPAG-LLOYD AKTIENGESELLSCHAFT, as
claimant to the M/V VIENNA EXPRESS,

Counter-Claimant and Third-Party Plaintiff,

-against-

U.S. OIL TRADING LLC,

Counter-Defendant and

O.W. BUNKER GERMANY GMBH, O.W. BUNKER
& TRADING A/S, ING BANK N.V., and CRÉDIT
AGRICOLE CORPORATE AND INVESTMENT
BANK,

Third-Party Defendants.

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**USOT'S STATEMENT
OF UNDISPUTED FACTS
PURSUANT TO LOCAL
CIVIL RULE 56.1(a)**

U.S. Oil Trading LLC (“USOT”), by its attorneys, Clyde & Co US LLP, pursuant to Local Civil Rule 56.1, contends that there is no genuine issue to be tried as to any of the following material facts:

A. The Parties

1. USOT is a limited liability company organized and existing under the laws of the State of Delaware and has its principal place of business at 3001 Marshall Avenue, Tacoma, Washington. (Nielsen Decl., at ¶ 5;¹ Keough Decl., Ex. A at ¶ 2)²

2. USOT is in the business of providing ocean-going vessels with bunker fuel (“bunkers”) and other necessities, and has been doing so since approximately 1980. (Nielsen Decl., at ¶ 6)

3. During the regular course of its business in 2014, USOT would receive requests from O.W. Bunker USA, Inc. (“O.W. USA”) to provide price quotes for deliveries of bunkers by USOT to vessels calling at the port of Tacoma, Washington. (Nielsen Decl., at ¶ 7; Weber Decl., at ¶ 4)³

4. USOT provided such price quotes to O.W. USA in its regular course of business and did so for the subject deliveries to the Vessels at the port of Tacoma, Washington in October 2014. (Nielsen Decl., at ¶ 8; Weber Decl., at ¶ 5)

¹ References herein to “Nielsen Decl.” are to the accompanying Declaration of Thor A. Nielsen dated May 12, 2016.

² References herein to “Keough Decl.” are to the accompanying Declaration of John R. Keough dated May 13, 2016.

³ References herein to “Weber Decl.” are to the accompanying Declaration of Lee Weber dated May 12, 2016.

5. During the regular course of its business in 2014, USOT would also receive purchase order confirmations from O.W. USA for sales made by USOT to O.W. Bunker & Trading A/S (“O.W. Denmark”) for bunkers to be delivered by USOT to vessels calling at the port of Tacoma, Washington. (Nielsen Decl., at ¶ 9)

6. USOT received such purchase order confirmations from O.W. USA in its regular course of business and did so for the subject deliveries to the Vessels at the port of Tacoma, Washington in October 2014. (*Id.*, at ¶ 10 and Exs. A, E, I and M)

7. USOT did not enter into a contract with Hapag-Lloyd Aktiengesellschaft (“Hapag”) for the subject deliveries of bunkers to the Vessels by USOT. (*Id.*, at ¶ 11)

8. USOT’s customer for the subject deliveries of bunkers to the subject vessels was O.W. USA’s parent company, O.W. Denmark, since USOT had opened an established line of credit with O.W. Denmark. (*Id.*, at ¶ 12)

9. USOT’s agreements with O.W. Denmark for the subject deliveries of bunkers to the Vessels by USOT contain no choice-of-law clause. (*Id.*, at ¶ 13)

10. USOT’s bunker delivery receipts expressly provide that all disputes arising out of the subject delivery shall be interpreted and enforced in accordance with U.S. maritime law and all statutes related thereto. (*Id.*, at ¶ 14 and Exs. C, G, K and O)

11. Neither Hapag nor anyone else from the Vessels objected to the U.S. choice-of-law clause in USOT’s bunker delivery receipts. (*Id.*, at ¶ 15)

12. During the regular course of its business in 2014, USOT would receive regular communications from Norton Lilly International, Inc. (“Norton Lilly”), the local agent for Hapag and its vessels at the port of Tacoma, Washington, before Hapag’s vessels called at the port of Tacoma, Washington to receive bunkers from USOT. (Weber Decl., at ¶ 6)

13. Such communications included the material details of Hapag's orders for the deliveries of bunkers by USOT to Hapag's vessels, including Hapag's purchase order reference number, the vessel's name, the port of delivery of the bunkers (Tacoma), the estimated time of each vessel's arrival, the quantity of bunkers to be delivered by USOT, the quality of the bunkers to be delivered by USOT and the identity of USOT as the supplier of the bunkers. (*Id.*, at ¶ 7)

14. USOT received such communications from Norton Lilly in its regular course of business and did so for the subject deliveries to the Vessels at the port of Tacoma, Washington in October 2014. (*Id.*, at ¶ 8)

15. USOT was never informed by Hapag, Norton Lilly, the Vessels' Masters or crew, any O.W. Bunker entity or anyone else that USOT was not authorized to deliver the subject bunkers to Hapag's Vessels, or that Norton Lilly, the Vessels' Masters or crew or any O.W. Bunker entity lacked authority to order the subject bunkers on behalf of Hapag and its Vessels. (*Id.*, at ¶ 9)

16. During its regular course of business, USOT relies on the credit of each vessel calling at the port of Tacoma, Washington, and the accompanying maritime liens available to USOT, when USOT delivers bunkers or other necessities to those vessels. (Nielsen Decl., at ¶ 16)

17. USOT relies on the credit of vessels, and the accompanying maritime liens available to USOT, since ocean-going vessels usually depart the port of Tacoma, Washington within a matter of hours after USOT begins bunkering the vessels. (*Id.*, at ¶ 17)

18. Given the time and operational constraints of the vessels to minimize their time in port and to maintain their ocean trading schedules, it has not been practical for USOT to

conduct an adequate credit check of each vessel's registered owner(s) and/or charterer(s) and/or agent(s), or to investigate the authority of any intermediary bunker broker(s) or trader(s) operating on behalf of the vessel and its owner(s) and/or charterer(s), each time a vessel calls at the port of Tacoma, Washington to receive bunkers from USOT in the regular course of business. (*Id.*, at ¶ 18)

19. USOT relied on the credit of Hapag's Vessels when delivering the subject bunkers to the Vessels at the port of Tacoma, Washington in October 2014. (*Id.*, at ¶ 19)

20. Hapag is a vessel owner and operator organized and existing under the laws of a foreign country with its principal place of business in Germany. (Keough Decl., Ex. A at ¶¶ 1 and 16)

21. Norton Lilly acted as local agent for Hapag and the Vessels at the port of Tacoma, Washington during the subject deliveries of bunkers to the Vessels by USOT in October 2014. (*Id.*, at Ex. B at Request No. 43)

22. At all material times, O.W. Bunker Germany GmbH ("O.W. Germany") was a company organized and existing under the laws of Germany with its principal place of business in Germany. (*Id.*, at Ex. A at ¶ 3)

23. At all material times, O.W. Denmark was an entity organized and existing under the laws of Denmark with its principal place of business in Denmark. (*Id.*, at ¶ 4)

24. At all material times, O.W. USA was an entity organized and existing under the laws of Texas with a principal place of business in Houston, Texas. (*Id.*, at ¶ 4(a))

25. ING Bank N.V. ("ING") is an entity organized and existing under the laws of a foreign country with its principal place of business in The Netherlands. (*Id.*, at ¶ 5)

B. M/V SANTA ROBERTA

26. At all material times, Hapag was the time charterer of the M/V SANTA ROBERTA, and was responsible for the purchase and payment of the subject bunkers delivered by USOT to the vessel. (*Id.*, at ¶ 16)

27. On September 26, 2014, the Master of the M/V SANTA ROBERTA sent an email to Hapag's bunker purchasing department requesting that bunkers be supplied to the vessel at the port of Tacoma, Washington on or about October 8, 2014. (*Id.*, at Ex. C)

28. On September 30, 2014, Hapag's bunker purchasing manager, Lukas Gaus, sent an email to the Master of the M/V SANTA ROBERTA confirming receipt of the Master's request for 2,700 metric tons of bunkers. (*Id.*, at Ex. D)

29. The same day, Mr. Gaus sent an email to an undisclosed list of recipients attaching Hapag's bunker inquiry form and requesting price quotes for the subject delivery of bunkers to the M/V SANTA ROBERTA. (*Id.*, at Ex. E; Ex. B at Request No. 3)

30. Later that day, O.W. USA's Kai Zhou sent an email to USOT's Lee Weber asking if USOT was interested in supplying bunkers to the M/V SANTA ROBERTA and stated in relevant part: "Typical spec will be needed." (Weber Decl., Ex. A)

31. Shortly thereafter, Mr. Weber responded by email providing Mr. Zhou with the quality specifications for USOT's bunkers to be used in the subject delivery to the M/V SANTA ROBERTA at the port of Tacoma, Washington. (*Id.*)

32. On October 1, 2014, Mr. Zhou sent an email to O.W. Germany's Karl Heinz Selmer which lists the quality specifications and price for USOT's bunkers to be used in the subject delivery to the M/V SANTA ROBERTA at the port of Tacoma, Washington. (Keough Decl., Ex. F)

33. Later that day, O.W. Germany's Karl Heinz Selmer sent an email to Mr. Gaus which lists the quality specifications for USOT's bunkers to be used in the subject delivery to the M/V SANTA ROBERTA at the port of Tacoma. (*Id.*, at Ex. G)

34. On or about the same day, Hapag's bunker purchasing department conducted an analysis of the price and quality of the offers Hapag received from O.W. Germany, and others, to calculate which offer represented the lowest energy cost to Hapag. (*Id.*, at Ex. H; Ex. LL at 80-84 and 173-80)

35. Hapag selected USOT to deliver the subject bunkers to the M/V SANTA ROBERTA after Hapag's analysis concluded that the price and quality of USOT's bunkers represented the lowest energy cost to Hapag. (*Id.*)

36. Hapag's price comparison sheet showing Hapag's analysis of the price and quality of USOT's bunkers for the subject delivery to the M/V SANTA ROBERTA lists USOT as the supplier. (*Id.*, at Ex. H)

37. On October 1, 2014, Hapag sent its purchase order to O.W. Germany to arrange for the delivery of 2,700 metric tons of bunker fuel by USOT to the M/V SANTA ROBERTA at the port of Tacoma on or about October 9, 2014. (*Id.*, at Ex. I; Ex. B at Request No. 7)

38. Hapag's purchase order expressly confirms that USOT will act as the supplier of the bunkers to the M/V SANTA ROBERTA. (*Id.*)

39. Hapag's purchase order also states in relevant part: "Supplier will advise buyer at latest 24H (or the last working day by Noon; Hamburg time) before delivery about typical specifications of the above mentioned products[.]" (*Id.*, at Ex. I)

40. On October 1, 2014, Hapag's Lukas Gaus also sent an email to Hapag's

agent, Norton Lilly, which states “BUNKER ORDER INFORMATION: Santa Roberta / TACOMA, WA[,]” and contains all of the material details of Hapag’s order for the subject delivery of bunker fuel by USOT to the M/V SANTA ROBERTA, including the following: Hapag’s purchase order reference number (4504069984), the vessel’s name (M/V SANTA ROBERTA), the port of delivery (Tacoma), the estimated time of the vessel’s arrival (October 9, 2014), the quantity of bunkers to be delivered by USOT (2,700 metric tones), the quality of the fuel to be delivered by USOT (RMK 500 Max 3.50% sulfur) and the identity of the supplier (USOT). (*Id.*, at Ex. J)

41. Shortly thereafter on the same day, Norton Lilly’s Operations Manager, Heath Albright, sent an email to Mr. Gaus which states in relevant part: “Thanks for yours below. We will arrange accordingly for delivery upon arrival in Tacoma.” (*Id.*, at Ex. K)

42. On October 1, 2014, O.W. Germany sent Hapag its sales order confirmation for the delivery of 2,700 metric tons of bunkers by USOT to the M/V SANTA ROBERTA at the port of Tacoma on or about October 9, 2014. (*Id.*, at Ex. L; Ex. B at Request No. 5)

43. O.W. Germany’s sales order confirmation expressly confirms that USOT will act as the supplier of bunkers to the M/V SANTA ROBERTA. (*Id.*)

44. O.W. Germany’s sales order confirmation also states in relevant part: “HALO GTC2007 shall apply.” (*Id.*; Ex. B at Request No. 6)

45. The contract between Hapag and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V SANTA ROBERTA states in relevant part: “German law shall be applicable on all bunker contracts which will be covered by German sellers.” (*Id.*, at Ex. M, Cl. 18)

46. On or about October 1, 2014, O.W. USA sent its purchase order confirmation to USOT for the subject delivery of 2,700 metric tons of bunkers by USOT to the M/V SANTA ROBERTA at the port of Tacoma on or about October 9, 2014. (Nielsen Decl., at ¶ 20 and Ex. A)

47. O.W. USA's purchase order confirmation for the subject delivery to the M/V SANTA ROBERTA lists Norton Lilly as Hapag's agent. (*Id.*, at Ex. A)

48. Later that morning, USOT's Lee Weber sent an email to Hapag's agent, Norton Lilly, which states in relevant part: "Got the order to deliver 2700mt of fuel to the Santa Roberta, reported to be in Tacoma Oct. 9[.] Please let me know her expected port schedule and desired delivery time when you have good info on her?" (Weber Decl., Ex. B)

49. Approximately three (3) minutes later, Norton Lilly's Mr. Albright sent an email to Mr. Weber which states in relevant part: "ETB 0630/9 and ETD 1800/9th at PCT. Can we set up delivery for 0700/9th?" (*Id.*)

50. Approximately five (5) minutes later, Mr. Weber sent an email to Mr. Albright which states: "Works for me, thanks!" (*Id.*)

51. On or about October 6, 2014, USOT issued its sales confirmation and sales authorization to O.W. Denmark for the subject delivery of 2,700 metric tons of bunkers to the M/V SANTA ROBERTA at the port of Tacoma on or about October 9, 2014. (Nielsen Decl., at ¶ 21 and Ex. B)

52. On October 7, 2014, Norton Lilly sent an email to the Master of the M/V SANTA ROBERTA, USOT's Lee Weber, and others, which confirms to the Master that USOT would deliver 2,700 metric tons of bunkers to the M/V SANTA ROBERTA commencing at 0600 hours on October 9, 2014. (Weber Decl., Ex. C)

53. On October 9, 2014, USOT delivered approximately 2,700.11 metric tons of bunker fuel to the M/V SANTA ROBERTA at the port of Tacoma, Washington. (Nielsen Decl., at ¶ 22 at Ex. C; Keough Decl, Ex. B at Request No. 9)

54. The Chief Engineer of the M/V SANTA ROBERTA and Hapag accepted and acknowledged the subject delivery of bunkers by USOT to the M/V SANTA ROBERTA by stamping USOT's bunker delivery receipt for the delivery. (*Id.*; Keough Decl., Ex. B at Request No. 10)

55. USOT's bunker delivery receipt states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil's Maritime Lien against the vessel or waive the vessel's ultimate responsibility and liability for the debt incurred through this transaction.

* * * *

MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

(Nielsen Decl., Ex. C)

56. On or about October 9, 2014, USOT issued its Invoice No. BWTD 83441 to O.W. Denmark in the amount of \$1,481,860.28 for the subject delivery of bunkers by USOT to the M/V SANTA ROBERTA. (*Id.*, at ¶ 23 and Ex. D)

57. Pursuant to Invoice No. BWTD 83441, payment was due to USOT on or before November 8, 2014. (*Id.*, at ¶ 24)

58. Hapag paid O.W. Germany \$1,495,860.94 for the subject delivery of fuel by USOT to the M/V SANTA ROBERTA. (Keough Decl., Ex. N; Ex. LL at 73, 161-63 and Ex. NN at 62-69)

59. USOT has not been paid for the amounts due under Invoice No. BWTD 83441 despite demands for payment. (Nielsen Decl., at ¶ 25)

C. M/V VIENNA EXPRESS

60. At all material times, Hapag was the registered owner of the M/V VIENNA EXPRESS, and was responsible for the purchase and payment of the subject bunkers delivered by USOT to the vessel. (Keough Decl., Ex. A at ¶ 16)

61. On October 8, 2014, the Master and Chief Engineer of the M/V VIENNA EXPRESS sent an email to Hapag's bunker purchasing department requesting that 2,700 metric tons of bunkers be supplied to the vessel at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. O)

62. Later that day, Hapag's bunker purchasing manager, Dorit Niemeyer, sent an email to the Master and Chief Engineer of the M/V VIENNA EXPRESS confirming receipt of the request for 2,700 metric tons of bunkers. (*Id.*, at Ex. P)

63. The same day, Ms. Niemeyer sent an email to an undisclosed list of recipients attaching Hapag's bunker inquiry form and requesting price quotes for the subject delivery of 2,700 metric tons of bunkers to the M/V VIENNA EXPRESS. (*Id.*, at Ex. Q)

64. Later that day, O.W. USA's Kai Zhou sent an email to USOT's Lee Weber which states in relevant part: "Please have a look for today's overnigher[.]" and lists the M/V VIENNA EXPRESS, the port of Tacoma, the estimated date of delivery on October 16,

2014, and the amount and quality of the bunkers requested (2,700 metric tons of RMK700). (Weber Decl., Ex. D)

65. Less than two (2) hours later, Mr. Weber sent an email to Mr. Zhou which states: “Let’s get this one[.]” (*Id.*)

66. On October 9, 2014, O.W. Germany’s Karl Heinz Selmer sent an email to Ms. Niemeyer which lists the quality specification for USOT’s bunkers to be used in the subject delivery to the M/V VIENNA EXPRESS at the port of Tacoma. (Keough Decl., Ex. R)

67. On or about the same day, Hapag’s bunker purchasing department conducted an analysis of the price and quality of the offers Hapag from O.W. Germany, and others, to calculate which offer represented the lowest energy cost to Hapag. (*Id.*, at Ex. S; Ex. LL at 80-84 and 173-80)

68. Hapag selected USOT to deliver the subject bunkers to the M/V VIENNA EXPRESS after Hapag’s analysis concluded that the price and quality of USOT’s bunkers represented the lowest energy cost to Hapag. (*Id.*)

69. Hapag’s price comparison sheet showing Hapag’s analysis of the price and quality of USOT’s bunkers for the subject delivery to the M/V VIENNA EXPRESS lists USOT as the supplier. (*Id.*, at Ex. S)

70. On October 9, 2014, Hapag sent its purchase order to O.W. Germany to arrange for the delivery of 2,700 metric tons of bunker fuel to the M/V VIENNA EXPRESS at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. T)

71. Hapag’s purchase order expressly confirms that USOT will act as the supplier of the subject bunkers to the M/V VIENNA EXPRESS. (*Id.*)

72. Hapag's purchase order also states in relevant part: "Supplier will advise buyer at latest 24H (or the last working day by Noon; Hamburg time) before delivery about typical specifications of the above mentioned products[.]" (*Id.*)

73. On October 9, 2014, Hapag's Dorit Niemeyer also sent an email to Hapag's agent, Norton Lilly, which states "BUNKER ORDER INFORMATION: Vienna Express / TACOMA, WA[.]" and contains all of the material details of Hapag's order for the subject delivery of bunker fuel by USOT to the M/V VIENNA EXPRESS, including the following: Hapag's purchase order reference number (4504073073), the vessel's name (M/V VIENNA EXPRESS), the port of delivery (Tacoma), the estimated time of the vessel's arrival (October 16, 2014), the quantity of bunkers to be delivered by USOT (2,700 metric tones), the quality of the fuel to be delivered by USOT (RMK 500 Max 3.50% sulfur) and the identity of the supplier (USOT). (*Id.*, at Ex. U)

74. On October 9, 2014, O.W. Germany sent Hapag its sales order confirmation for the delivery of 2,700 metric tons of bunkers by USOT to the M/V VIENNA EXPRESS at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. V)

75. O.W. Germany's sales order confirmation expressly confirms that USOT will act as the supplier of bunkers to the M/V VIENNA EXPRESS. (*Id.*)

76. O.W. Germany's sales order confirmation also states in relevant part: "HALO GTC2007 shall apply." (*Id.*)

77. The contract between Hapag and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V VIENNA EXPRESS states in relevant part: "German law shall be applicable on all bunker contracts which will be covered by German sellers." (*Id.*, at Ex. M, Cl. 18)

78. On or about October 9, 2014, O.W. USA sent its purchase order confirmation to USOT for the subject delivery of 2,700 metric tons of bunkers by USOT to the M/V VIENNA EXPRESS at the port of Tacoma on or about October 16, 2014. (Nielsen Decl., at ¶ 26 and Ex. E)

79. O.W. USA's purchase order confirmation for the subject delivery to the M/V VIENNA EXPRESS lists Norton Lilly as Hapag's agent. (*Id.*, at Ex. E)

80. The same day, Norton Lilly's Operations Manager, Heath Albright, sent an email to USOT's Lee Weber forwarding Hapag's email titled "BUNKER ORDER INFORMATION: Vienna Express / TACOMA, WA" dated October 9, 2014, and stating in relevant part: "ETB WUT is 1800/15 and ETD 0300/17. Can we arrange for 1900/15?" (Weber Decl., Ex. E)

81. Approximately fifteen (15) minutes later, Norton Lilly's Mr. Albright sent another email to USOT's Mr. Weber which states in relevant part: "Scratch that. New coastal showing ETB 0100/17 and ETD 0300/18. Can we deliver instead 0800/17?" (*Id.*)

82. Shortly thereafter, USOT's Mr. Weber sent an email to Norton Lilly's Mr. Albright which states in relevant part: "I'm thinking I'd like to shoot for 0600 so I can get to Tote right after that. If they should speed up then we can re-look." (*Id.*)

83. On or about October 15, 2014, USOT issued its sales confirmation and sales authorization to O.W. Denmark for the subject delivery of 2,700 metric tons of bunkers to the M/V VIENNA EXPRESS at the port of Tacoma on or about October 17, 2014. (Nielsen Decl., at ¶ 27 and Ex. F)

84. On or about October 18, 2014, USOT delivered approximately 2,710.93 metric tons of bunker fuel to the M/V VIENNA EXPRESS at the port of Tacoma, Washington. (*Id.*, at ¶ 28 and Ex. G)

85. The Chief Engineer of the M/V VIENNA EXPRESS and Hapag accepted and acknowledged the subject delivery of bunkers by USOT to the M/V VIENNA EXPRESS by stamping USOT's bunker delivery receipt for the delivery. (*Id.*; Keough Decl., Ex. LL at 198-200)

86. USOT's bunker delivery receipt states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil's Maritime Lien against the vessel or waive the vessel's ultimate responsibility and liability for the debt incurred through this transaction.

* * * *

MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

(Nielsen Decl., Ex. G)

87. On or about October 18, 2014, USOT issued its Invoice No. BWTD 83451 to O.W. Denmark in the amount of \$1,414,594.53 for the subject delivery of bunkers by USOT to the M/V VIENNA EXPRESS. (*Id.*, at ¶ 29 and Ex. H)

88. Pursuant to Invoice No. BWTD 83451, payment was due to USOT on or before November 17, 2014. (*Id.*, at ¶ 30)

89. USOT has not been paid for the amounts due under Invoice No. BWTD 83451 despite demands for payment. (*Id.*, at ¶ 31)

D. M/V SEASPAN HAMBURG

90. At all material times, Hapag was the time charterer of the M/V SEASPAN HAMBURG, and was responsible for the purchase and payment of the subject bunkers delivered by USOT to the vessel. (Keough Decl., Ex. A at ¶ 16)

91. On October 8, 2014, the Master and Chief Engineer of the M/V SEASPAN HAMBURG sent an email to Hapag's bunker purchasing department requesting that 2,900 metric tons of bunkers be supplied to the vessel at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. W)

92. On October 9, 2014, Hapag's Lukas Gaus sent an email to an undisclosed list of recipients attaching Hapag's bunker inquiry form and requesting price quotes for the subject delivery of 2,900 metric tons of bunkers to the M/V SEASPAN HAMBURG. (*Id.*, at Ex. X; Ex. B at Request No. 16)

93. Later that day, USOT's Lee Weber received an email from broker Bluewater Bunkering LLC ("Bluewater") which states in relevant part: "Have following inquiry for 'Overnight' quoting[.]" and lists the M/V SEASPAN HAMBURG, the port of Tacoma, the estimated date of delivery on October 16, 2014, and the amount and type of the bunkers requested (2,900 metric tons of RMK700). (Weber Decl., Ex. F)

94. Approximately five (5) hours later, Mr. Weber sent an email to Hapag's agent, Norton Lilly, which forwards the earlier email from Bluewater and states in relevant part: "I haven't placed an offer on this job but wanted to check vessel timing, considering we already have the order for the Vienna Express with similar schedule." (*Id.*)

95. Approximately ten (10) minutes later, Norton Lilly's Operations Manager, Heath Albright, sent an email to USOT's Lee Weber which states: "Will be ETB 0700/16 and ETD 1800/16[.]" to which Mr. Weber responded by email: "thx." (*Id.*)

96. Later that day, Mr. Weber sent an email to O.W. USA's Kai Zhou with the subject line "H/L" and which states in relevant part: "You seeing the Santa Ricarda and the Seaspan Hamburg?" (*Id.*, at Ex. G)

97. On October 10, 2014, O.W. Germany's Karl Heinz Selmer sent an email to Hapag's Lukas Gaus which lists the quality specifications for USOT's bunkers to be used in the subject delivery to the M/V SEASPAN HAMBURG at the port of Tacoma, Washington. (Keough Decl., Ex. Y)

98. The same day, Hapag's bunker purchasing department conducted an analysis of the price and quality of the offers from O.W. Germany, and others, to calculate which offer represented the lowest energy cost to Hapag. (*Id.*, at Ex. Z; Ex. LL at 80-84 and 173-80)

99. Hapag selected USOT to deliver the subject bunkers to the M/V SEASPAN HAMBURG after Hapag's analysis concluded that the price and quality of USOT's bunkers represented the lowest energy cost to Hapag. (*Id.*)

100. Hapag's price comparison sheet showing Hapag's analysis of the price and quality of USOT's bunkers for the subject delivery to the M/V SEASPAN HAMBURG lists USOT as the supplier. (*Id.*, at Ex. Z)

101. On October 10, 2014, Hapag's Lukas Gaus sent Hapag's purchase order to O.W. Germany to arrange for the delivery of 2,900 metric tons of bunkers to the M/V SEASPAN HAMBURG at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. AA; Ex. B at Request No. 20)

102. Hapag's purchase order expressly confirms that USOT will act as the supplier of the subject bunkers to the M/V SEASPAN HAMBURG. (*Id.*)

103. Hapag's purchase order also states in relevant part: "Supplier will advise buyer at latest 24H (or the last working day by Noon; Hamburg time) before delivery about typical specifications of the above mentioned products[.]" (*Id.*)

104. On October 10, 2014, Hapag's Lukas Gaus also sent an email to Hapag's agent, Norton Lilly, which states "BUNKER ORDER INFORMATION: MV Seaspán Hamburg / TACOMA, WA[.]" and contains all of the material details of Hapag's order for the subject delivery of bunker fuel by USOT to the M/V SEASPAN HAMBURG, including the following: Hapag's purchase order reference number (4504073597), the vessel's name (M/V SEASPAN HAMBURG), the port of delivery (Tacoma), the estimated time of the vessel's arrival (October 16, 2014), the quantity of bunkers to be delivered by USOT (2,900 metric tones), the type of the fuel to be delivered by USOT (RMK 700 Max 3.50% sulfur) and the identity of the supplier (USOT). (*Id.*, at Ex. BB)

105. On October 10, 2014, O.W. Germany sent Hapag its sales order confirmation for the delivery of 2,900 metric tons of bunkers by USOT to the M/V SEASPAN HAMBURG at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. CC; Ex. B at Request No. 18)

106. O.W. Germany's sales order confirmation expressly confirms that USOT will act as the supplier of bunkers to the M/V SEASPAN HAMBURG. (*Id.*)

107. O.W. Germany's sales order confirmation also states in relevant part: "HALO GTC2007 shall apply." (*Id.*; Ex. B at Request No. 19)

108. The contract between Hapag and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V SEASPAN HAMBURG states in relevant part: “German law shall be applicable on all bunker contracts which will be covered by German sellers.” (*Id.*, at Ex. M, Cl. 18)

109. On October 10, 2014, O.W. USA sent its purchase order confirmation to USOT for the subject delivery of 2,900 metric tons of bunkers by USOT to the M/V SEASPAN HAMBURG at the port of Tacoma on or about October 16, 2014. (Nielsen Decl., at ¶ 32 and Ex. I)

110. O.W. USA’s purchase order confirmation for the subject delivery to the M/V SEASPAN HAMBURG lists Norton Lilly as Hapag’s agent. (*Id.*, at Ex. I)

111. The same day, Norton Lilly’s Operations Manager, Heath Albright, sent an email to USOT’s Lee Weber forwarding Hapag’s email titled “BUNKER ORDER INFORMATION: MV Seaspan Hamburg / TACOMA, WA” dated October 10, 2014, and stating in relevant part: “Looks like you got this one. ETB 0700/6 and ETD 1800/6. Can we arrange for 0700/6 delivery?” (Weber Decl., Ex. H)

112. Approximately ninety (90) minutes later, USOT’s Mr. Weber sent an email to Norton Lilly’s Mr. Albright which states: “Thanks – guessing you mean the 16th though[.]” (*Id.*)

113. Approximately fifteen (15) minutes later, Norton Lilly’s Mr. Albright sent an email to USOT’s Mr. Weber which states: “Yeah, sorry. Early email. 16th is correct[.]” to which USOT’s Mr. Weber responded: “Done – thanks[.]” (*Id.*)

114. On or about October 13, 2014, USOT issued its sales confirmation and sales authorization to O.W. Denmark for the subject delivery of 2,900 metric tons of bunkers to

the M/V SEASPAN HAMBURG at the port of Tacoma on or about October 16, 2014. (Nielsen Decl., at ¶ 33 and Ex. J)

115. On October 15, 2014, Norton Lilly sent an email to the Master of the M/V SEASPAN HAMBURG, USOT's Lee Weber and others, which confirms to the Master that USOT would deliver 2,900 metric tons of bunkers to the M/V SEASPAN HAMBURG commencing at 0730 hours on October 16, 2014. (Weber Decl., Ex. I)

116. On October 16, 2014, USOT delivered approximately 2,900.21 metric tons of bunkers to the M/V SEASPAN HAMBURG at the port of Tacoma, Washington. (Nielsen Decl., at ¶ 34 and Ex. K; Keough Decl., Ex. B at Request No. 22)

117. The Chief Engineer of the M/V SEASPAN HAMBURG and Hapag accepted and acknowledged the subject delivery of bunkers by USOT to the M/V SEASPAN HAMBURG by stamping USOT's bunker delivery receipt for the delivery. (*Id.*; Keough Decl., Ex. B at Request No. 23)

118. USOT's bunker delivery receipt states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil's Maritime Lien against the vessel or waive the vessel's ultimate responsibility and liability for the debt incurred through this transaction.

* * * *

MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

(Nielsen Decl., Ex. K)

119. On or about October 16, 2014, USOT issued its Invoice No. BWTD 83450 to O.W. Denmark in the amount of \$1,507,408.99 for the delivery of bunkers by USOT to the M/V SEASPAN HAMBURG. (*Id.*, at ¶ 35 and Ex. L)

120. Pursuant to Invoice No. BWTD 83450, payment was due to USOT on or before November 17, 2014. (*Id.*, at ¶ 36)

121. USOT has not been paid for the amounts due under Invoice No. BWTD 83450 despite demands for payment. (*Id.*, at ¶ 37)

E. M/V SOFIA EXPRESS

122. At all material times, Hapag was the registered owner of the M/V SOFIA EXPRESS, and was responsible for the purchase and payment of the subject bunkers delivered by USOT to the vessel. (Keough Decl., Ex. A at ¶ 16)

123. On October 20, 2014, the Master of the M/V SOFIA EXPRESS sent an email to Hapag's bunker purchasing department requesting that 2,700 metric tons of bunkers be supplied to the vessel at the port of Tacoma on or about October 29, 2014. (*Id.*, at Ex. DD)

124. On October 22, 2014, Hapag's bunker purchasing manager, Dorit Niemeyer, sent an email to an undisclosed list of recipients attaching Hapag's bunker inquiry form and requesting price quotes for the subject delivery of 2,700 metric tons of bunkers to the M/V SOFIA EXPRESS. (*Id.*, at Ex. EE)

125. Later that day, O.W. Germany's Karl Heinz Selmer sent an email to O.W. USA which states in relevant part: "[P]ls quote with overnight val[.]" and lists the M/V SOFIA EXPRESS, the port of Tacoma, the estimated date of delivery on October 29, 2014, and the amount and type of the bunkers requested (2,700 metric tons of RMK 700). (*Id.*, at Ex. FF)

126. Approximately one (1) minute later, O.W. USA's Kai Zhou sent an email to O.W. Germany's Karl Heinz Selmer which states: "Thank you Karl. Reverting with overnight validity." (*Id.*, at Ex. GG)

127. Later that day, Mr. Zhou sent an instant message to USOT's Lee Weber which states in relevant part: "Hello, we are still looking at 490 at least for Sofia" (Weber Decl., Ex. J)

128. In response, USOT's Mr. Weber sent two instant messages to Mr. Zhou which state in relevant part: "I would do 490 on the one[.] [N]ot happy but would do[.]" (*Id.*)

129. On October 23, 2014, Hapag's bunker purchasing department conducted an analysis of the price and quality of the offers from O.W. Germany, and others, to calculate which offer represented the lowest energy cost to Hapag. (Keough Decl., Ex. HH; Ex. LL at 80-84 and 173-80)

130. Hapag selected USOT to deliver the subject bunkers to the M/V SOFIA EXPRESS after Hapag's analysis concluded that the price and quality of USOT's bunkers represented the lowest energy cost to Hapag. (*Id.*)

131. Hapag's price comparison sheet showing Hapag's analysis of the price and quality of USOT's bunkers for the subject delivery to the M/V SOFIA EXPRESS lists USOT as the supplier. (*Id.*, at Ex. HH)

132. On October 23, 2014, Hapag's Dorit Niemeyer sent Hapag's purchase order to O.W. Germany to arrange for the delivery of 2,700 metric tons of bunkers to the M/V SOFIA EXPRESS at the port of Tacoma on or about October 29, 2014. (*Id.*, at Ex. II; Keough Decl., Ex. B at Request No. 32)

133. Hapag's purchase order expressly confirms that USOT will act as the supplier of the subject bunkers to the M/V SOFIA EXPRESS. (*Id.*)

134. Hapag's purchase order also states in relevant part: "Supplier will advise buyer at latest 24H (or the last working day by Noon; Hamburg time) before delivery about typical specifications of the above mentioned products[.]" (*Id.*, at Ex. II)

135. On October 23, 2014, Hapag's Dorit Niemeyer also sent an email to Hapag's agent, Norton Lilly, which states "BUNKER ORDER INFORMATION: Sofia Express / TACOMA, WA[.]" and contains all of the material details of Hapag's order for the subject delivery of bunker fuel by USOT to the M/V SOFIA EXPRESS, including the following: Hapag's purchase order reference number (4504078460), the vessel's name (M/V SOFIA EXPRESS), the port of delivery (Tacoma), the estimated time of the vessel's arrival (October 29, 2014), the quantity of bunkers to be delivered by USOT (2,700 metric tones), the type of bunkers to be delivered by USOT (RMK 700 Max 3.50% sulfur) and the identity of the supplier (USOT). (*Id.*, at Ex. JJ)

136. On October 23, 2014, O.W. Germany sent Hapag its sales order confirmation for the delivery of 2,700 metric tons of bunkers by USOT to the M/V SOFIA EXPRESS at the port of Tacoma on or about October 16, 2014. (*Id.*, at Ex. KK; Ex. B at Request No. 30)

137. O.W. Germany's sales order confirmation expressly confirms that USOT will act as the supplier of bunkers to the M/V SOFIA EXPRESS. (*Id.*)

138. O.W. Germany's sales order confirmation also states in relevant part: "HALO GTC2007 shall apply." (*Id.*; Ex. B at Request No. 31)

139. The contract between Hapag and O.W. Germany for the purchase and sale of bunkers for the subject delivery to the M/V SOFIA EXPRESS states in relevant part: “German law shall be applicable on all bunker contracts which will be covered by German sellers.” (*Id.*, at Ex. M, Cl. 18)

140. On October 23, 2014, O.W. USA sent its purchase order confirmation to USOT for the subject delivery of 2,700 metric tons of bunkers by USOT to the M/V SOFIA EXPRESS at the port of Tacoma on or about October 29, 2014. (Nielsen Decl., at ¶ 38 and Ex. M)

141. Later that morning, USOT’s Lee Weber sent an email to Hapag’s agent, Norton Lilly, which states in relevant part: “Got the order to supply 2700 mt to the Sofia Express. Let me know when you have a good handle on her port schedule?” (Weber Decl., Ex. K)

142. Approximately forty-five (45) minutes later, Norton Lilly’s Operations Agent, Jamey Morrison, sent an email to Mr. Weber which states in relevant part: “Presently we are looking at 29/0900 ETB, 30/1700 ETD for the SOFIA EXPRESS, WUT in Tacoma.” (*Id.*)

143. Later that afternoon, Mr. Weber sent an email to Mr. Morrison which states: “Thank you Jamey – right now I’m leading towards about 2100/29th, right after the barge completes a delivery to a Tote ship but let’s touch base again first thing Monday the 27th to get her current status?” (*Id.*)

144. On October 28, 2014, USOT’s Mr. Weber sent an email to Norton Lilly’s Mr. Morrison which states in relevant part: “Good morning sir – any update or new news with the Sofia Express?” (*Id.*, at Ex. L)

145. Approximately thirty (30) minutes later, Mr. Morrison sent an email to Mr. Weber which states in relevant part: “Yes have just received confirmation of both ETB 29/0500, and ETD 30/0800. Let’s keep the 29/0600 stem if that is still good for you.” (*Id.*)

146. Approximately one (1) minute later, Mr. Weber sent an email to Mr. Morrison which states: “Done deal – thx[.]” (*Id.*)

147. On October 28, 2014, USOT issued its sales confirmation and sales authorization to O.W. Denmark for the subject delivery of 2,700 metric tons of bunkers to the M/V SOFIA EXPRESS at the port of Tacoma on or about October 29, 2014. (Nielsen Decl., at ¶ 39 and Ex. N)

148. The same day, Norton Lilly sent an email to the Master of the M/V VIENNA EXPRESS, USOT’s Lee Weber, and others, which confirms to the Master that USOT would deliver 2,700 metric tons of bunkers to the M/V VIENNA EXPRESS commencing at 0600 hours on October 29, 2014. (Weber Decl., Ex. M)

149. On October 29, 2014, USOT delivered approximately 2,680.22 metric tons of bunkers to the M/V SOFIA EXPRESS at the port of Tacoma, Washington. (Nielsen Decl., at ¶ 40 and Ex. O; Keough Decl., Ex. B at Request No. 34)

150. The Master of the M/V SOFIA EXPRESS and Hapag accepted and acknowledged the subject delivery of bunkers by USOT to the M/V SOFIA EXPRESS by stamping USOT’s bunker delivery receipt for the delivery. (*Id.*; Keough Decl., Ex. B at Request No. 35)

151. USOT’s bunker delivery receipt states in relevant part:

DISCLAIMERS: No disclaimer stamp of any type or form will be accepted on this bunker certificate, nor should any such stamp . . . alter, change or waive U.S. Oil’s Maritime Lien against the vessel

or waive the vessel's ultimate responsibility and liability for the debt incurred through this transaction.

* * * *

MARITIME LIENS: All disputes arising out of this transaction shall be interpreted and enforced in accordance with the general maritime law of the United States of America and all statutes related thereto.

(Nielsen Decl., Ex. O)

152. On or about October 29, 2014, USOT issued its Invoice No. BWTD 83463 to O.W. Denmark in the amount of \$1,315,507.80 for the subject delivery of bunkers by USOT to the M/V SOFIA EXPRESS. (*Id.*, at ¶ 41 and Ex. P)

153. Pursuant to Invoice No. BWTD 83463, payment was due to USOT on or before November 28, 2014. (*Id.*, at ¶ 42)

154. USOT has not been paid for the amounts due under Invoice No. BWTD 83463 despite demands for payment. (*Id.*, at ¶ 43)

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